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International Convention for the Protection of All Persons from Enforced Disappearance

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AT URBANA-CHAMPAIGN

Committee on Enforced Disappearances

Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Serbia under article 29, paragraph 1, of the Convention (CED/C/SRB/1) at its 124th and 125th meetings (CED/C/SR.124 and 125), held on 4 and 5 February 2015. At its 135th meeting, held on 12 February 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Serbia under article 29, paragraph 1, of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the constructive dialogue held with the high-level delegation from the State party on the measures taken to implement the provisions of the Convention, which has dispelled several of its concerns.

3. The Committee also thanks the State party for its written replies (CED/C/SERB/Q/1/Add.1) to the list of issues (CED/C/SRB/Q/1).

B. Positive aspects

4. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments and their optional protocols, as well as the Rome Statute of the International Criminal Court.

5. The Committee also welcomes the fact that the State party has recognized the competence of the Committee, under articles 31 and 32 of the Convention, in respect of individual and inter-State communications.

6. The Committee also commends the State party on the measures adopted in relevant areas, including:

(a) The adoption of the Law on the Organization and Competence of Government Authorities in War Crimes Proceedings, as amended in 2004;

(b) The establishment of the Commission for Missing Persons in June 2006;

* Adopted by the Committee at its eighth session (2–13 February 2015).

(c) The signature of the various bilateral agreements and documents on cooperation regarding persons gone missing during armed conflicts, as mentioned in paragraph 95 of the report;

(d) The establishment of the Protector of Citizens of the Republic of Serbia (Ombudsperson) by Laws 79/2005 and 54/2007, and its designation as the national mechanism for the prevention of torture.

7. The Committee observes that, by virtue of article 16 of the Constitution, ratified international treaties shall be applied directly and must be in accordance with the Constitution. In this respect, the Committee takes note of the statement made by the delegation that the Convention was examined before ratification and that no incompatibility with the Constitution was found.

8. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council to visit the country. In that connection, the Committee welcomes the visit to Serbia of the Working Group on Enforced or Involuntary Disappearances in June 2014, and encourages the State party to continue cooperating with that mechanism under its mandate.

C. Principal subjects of concern and recommendations

9. The Committee considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearances was not in full compliance with the obligations incumbent on the States that have ratified the Convention. The Committee encourages the State party to implement its recommendations, which have been made in a constructive and helpful spirit, with the aim of ensuring that the existing legal framework, and the way it is implemented by State authorities, is fully consistent with the rights and obligations contained in the Convention.

Definition and criminalization of enforced disappearance (arts. 1-7)

The offence of enforced disappearance

10. The Committee welcomes the statement by the delegation that amendments to the Criminal Code are being prepared in order to introduce the offence of enforced disappearance. It also notes the State party's position that, currently, the actions described in article 2 of the Convention may constitute legal characteristics of criminal offences of the Criminal Code. In this respect, the Committee considers that only the criminalization of enforced disappearance as a separate offence would enable the State party to comply with the obligation under article 4, which is closely related to other treaty obligations concerning legislation, such as those in articles 6, 7 and 8 (arts. 2, 4, 6, 7 and 8).

11. **The Committee recommends that the State party adopt the necessary measures to accelerate the process to make enforced disappearance an autonomous offence in line with the definition contained in article 2 of the Convention, as well as to ensure that the offence is punishable by appropriate penalties which take into account its extreme seriousness and that a system of superior responsibility which is in accordance with article 6, paragraph 1 (b), of the Convention is applicable to this offence.**

12. **In the light of article 8 of the Convention, the Committee recommends that the State party ensure that if a statute of limitations applies to enforced disappearance, it is of long duration and proportionate to the extreme seriousness of the offence and, taking into account the continuous nature of enforced disappearance, that it commences from the moment when the offence ceases.**

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)

Investigation of enforced disappearances committed in the context of past armed conflicts

13. The Committee notes with concern the information received that no one has yet been held responsible in the State party for the concealment of the hundreds of bodies found in mass graves in Batajnica, Petrovo Selo, Lake Perućac and Rudnica (arts. 12 and 24).

14. **The Committee recommends that the State party ensure that all cases of enforced disappearance that may have been committed by agents of the State party or by persons or groups of persons acting with their authorization, support or acquiescence in the context of past armed conflicts are investigated thoroughly and impartially without delay, including guarantees for full access to the relevant archives; and that those found responsible, including the commanders and civilian superiors, are punished in accordance with the gravity of their acts. The State party should also guarantee that sufficient personnel and technical and financial resources are provided to the Office of the War Crimes Prosecutor and any other competent authorities so that they can discharge their duties promptly and effectively.**

Prevention of acts that hinder the progress of investigations

15. The Committee notes that police officers and civil servants suspected of having committed an offence may be temporarily suspended. It also notes the information provided by the delegation that the superior or head of an investigative unit may suspend or exclude certain members of an investigation or request a different organizational unit to carry out certain activities. It is concerned, however, that the suspension of any State agent, civilian or military, suspected of having committed an offence is not always guaranteed in criminal investigations (art. 12).

16. **In order to strengthen the existing legal framework and ensure the adequate application of article 12, paragraph 4, of the Convention, the Committee recommends that the State party adopt explicit legal provisions that expressly establish: (a) the suspension, for the duration of the investigation, of any State agents, civilian or military, suspected of having committed an offence of enforced disappearance; and (b) a mechanism that ensures that law enforcement or security forces, whether civilian or military, whose members are suspected of having committed an enforced disappearance do not take part in the investigation.**

Protection of persons participating in an investigation

17. The Committee is concerned about allegations of threats against witnesses in war crime trials by officials charged with their protection. However, the Committee welcomes the commitment of the State party to improve the current shortcomings in the system of witness protection in cases of war crimes, including the fact that civil control has been envisaged in reference to claims relating to members of the Witness Protection Unit (art. 12).

18. **The Committee recommends that the State party adopt the necessary measures to ensure that all allegations of threats or intimidation against witnesses in judicial procedures relating to war crimes and enforced disappearances by officials charged with their protection are promptly, thoroughly and impartially investigated, even if there has been no formal complaint; that the alleged perpetrators are prosecuted; and that, if found guilty, they are punished with appropriate penalties. The Committee also recommends that, in the light of the upcoming measures to be taken to improve the system of witness protection in cases of war crimes, the State party ensure that the**

independence of the Witness Protection Unit is strengthened with a view to guaranteeing the highest possible standard of protection.

Measures to prevent enforced disappearances (arts. 16–23)

Non-refoulement

19. While welcoming the information provided by the State party that an appeal postpones the execution of an order of extradition (CED/C/SRB/Q/1/Add.1, para. 34), the Committee notes that it has not received clarification in this respect concerning decisions on the expulsion of asylum seekers whose asylum applications have been rejected. The Committee also notes that it has not received information on whether the appeals procedure for rejected asylum applications provides for a substantive review of the facts. In addition, the Committee observes that domestic law does not provide for a specific legal prohibition of refoulement where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance (art. 16).

20. **The State party should ensure that the appeals procedure for rejected asylum applications has automatic suspensive effect and provides for a substantive review of the application. The State party should also consider explicitly incorporating into its domestic legislation a prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance.**

Training on the Convention

21. The Committee notes the information provided concerning the training given to various State actors on matters linked to the Convention. Nevertheless, the Committee notes with concern that no specific and regular training on the Convention is provided (art. 23).

22. **The Committee recommends that the State party should ensure that all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive appropriate and regular training on the provisions of the Convention, in conformity with article 23.**

Measures to provide reparation and to protect children from enforced disappearance (arts. 24 and 25)

Definition of victim

23. The Committee, while taking note of the information provided by the State party according to which "it seems that the notion of a damaged party according to the Criminal Procedure Code and the Law on Contracts and Torts is narrower than the notion of a victim within the meaning of article 24 of the Convention, for which reason the existing legal framework may leave certain persons without protection" (CED/C/SRB/1, para. 138), observes with interest the affirmation by the delegation that it is necessary to amend the current legislation in this respect (art. 24).

24. **In order to ensure the full enjoyment by any individual who has suffered harm as the direct result of an enforced disappearance of the rights set forth in the Convention, in particular the rights to the truth and to reparation enshrined in its article 24, paragraphs 2, 4 and 5, the State party should consider introducing the**

necessary legislative amendments in order to establish a definition of victim that conforms to that contained in article 24, paragraph 1, of the Convention.

The right to receive reparation and prompt, fair and adequate compensation

25. While taking note of the information provided by the delegation regarding measures taken to ensure benefits for relatives of people gone missing during past armed conflicts —including the psychological support that has been provided jointly with the International Committee of the Red Cross to more than 750 families—the Committee is concerned about information it received on the high threshold set for victims to prove harm in civil proceedings and other obstacles that could hinder their effective access to reparation and prompt and adequate compensation. In this respect, it notes with concern that the administrative compensation system set up for victims of the past armed conflicts is not available to victims of enforced disappearance for as long as the disappeared person is not declared dead. The Committee is further concerned that the legal system of the State party does not provide a statutory right to obtain adequate reparation that includes all the reparatory measures provided for in article 24, paragraph 5, of the Convention (art. 24).

26. **The State party should guarantee the right to reparation and to prompt, fair and adequate compensation of all persons who have suffered harm as a direct result of an enforced disappearance, regardless of when it was perpetrated and even if no criminal proceedings have been brought against the possible perpetrators or the latter have not been identified. To this effect, it recommends that the State party adopt the necessary legislative or other measures to:**

(a) Establish a comprehensive, gender-sensitive system of reparation that is fully in line with article 24, paragraphs 4 and 5, of the Convention;

(b) Ensure that all persons who have suffered direct harm as a result of an enforced disappearance that may have been perpetrated in the past by agents of the State or by persons or groups of persons acting with their authorization, support or acquiescence may exercise their right to receive reparation, including medical and psychological rehabilitation, in accordance with the terms of article 24, paragraphs 4 and 5, of the Convention. In this respect, and bearing in mind that a bill on the rights of war veterans, disabled war veterans, civilian victims of war and their family members is still being drafted, the Committee urges the State party to avail itself of the opportunity to ensure that all victims of enforced disappearance that may have been perpetrated in the past obtain full reparation—including restitution, rehabilitation, satisfaction and guarantees of non-repetition—without discrimination and without having to declare the disappeared person dead;

(c) Guarantee the right to the truth with respect to the enforced disappearances that may have been committed in the past.

Search for persons missing from the Kosovo[1] conflict

27. While noting with appreciation the joint efforts carried out within the framework of the Working Group on Missing Persons, the Committee is concerned that more than 1,650 persons still remain listed as missing from the Kosovo conflict, many of whom might have been victims of enforced disappearance (art. 24).

28. **In the light of article 24, paragraph 3, of the Convention, the Committee recommends that the State party continue and intensify its efforts within the**

[1]All references to Kosovo in the present document should be understood to be in full compliance with Security Council resolution 1244 (1999), without prejudice to the status of Kosovo.

framework of the Working Group on Missing Persons with a view to achieving further progress in the search for the missing persons and, in the event of death, the identification of their remains.

Legal situation of disappeared persons and their relatives

29. The Committee notes with concern that the national legal framework of the State party does not adequately address the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights (art. 24).

30. **The Committee recommends that the State party adopt the necessary legislative measures with a view to setting up a procedure to obtain a declaration of absence as a result of enforced disappearance, in order to adequately address the legal situation of disappeared persons and that of their relatives in areas such as social welfare, financial matters, family law and property rights.**

Legislation concerning the wrongful removal of children

31. While taking note of the provisions of the Criminal Code relating to abduction, change of family status, trafficking and forging documents cited in the replies to the list of issues (CED/C/SRB/Q/1/Add.1, paras. 63and 64), the Committee is concerned about the lack of provisions that specifically penalize the actions relating to the wrongful removal of children referred to in article 25, paragraph 1, of the Convention (art. 25).

32. **The Committee recommends that the State party adopt the necessary legislative measures to make the actions referred to in article 25, paragraph 1, of the Convention specific offences, and for such actions establish penalties commensurate with their extreme gravity.**

D. Dissemination and follow-up

33. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. The Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims, as set forth in the Convention.

34. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

35. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29, paragraph 1, of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society

and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

36. In accordance with the Committee's rules of procedure, by 13 February 2016 at the latest the State party should provide relevant information on its implementation of the Committee's recommendations as contained in paragraphs 11, 14 and 28 above.

37. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 13 February 2021, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.

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